

ORDINANCE NO.

AN ORDINANCE REPEALING AND REPLACING CITY CODE SECTION 9-4-11 RELATING TO CAMPING IN PUBLIC AREA PROHIBITED, ~~AND CITY CODE SECTION 9-4-14 RELATING TO OBSTRUCTION IN THE DOWNTOWN AUSTIN COMMUNITY COURT AREA PROHIBITED~~; AND CREATING OFFENSES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. FINDINGS:

- (A) Council finds that this ordinance is needed to clarify and further define the prohibitions on camping, obstruction, and sitting and lying in public and other specified areas.
- (B) Council finds that the prohibitions and law enforcement procedures enacted by this ordinance do not make it a crime to be a person experiencing homelessness in the City, but prohibit specific risky and potentially injurious behaviors in specific areas.
- (C) Council finds that the City Manager's August 30, 2019 memorandum challenges the Council to provide additional clarity with regards to the June 20, 2019 changes Council made to City Code Sections 9-4-11 (*Camping in Public Area Prohibited*) and 9-4-14 (*Obstruction in the Downtown Austin Community Court Area Prohibited*).

PART 2. The Caption and City Code Section 9-4-11 (*Camping in Public Area Prohibited*) ~~are~~ repealed and replaced to read as follows:

§ 9-4-11 CAMPING AND OBSTRUCTION IN CERTAIN PUBLIC AREAS PROHIBITED

9-4-11(1) DEFINITIONS:

- (A) In this section:
- (1) CAMP means the use of a public area for living accommodation purposes including:

- (a) storing personal belongings;
- (b) making a camp fire;
- (c) using a tent or shelter or other structure for a living accommodation;
- (d) carrying on cooking activities; or
- (e) digging or earth breaking activities.

(2) HOMELESS SHELTER means a supervised publicly or privately operated facility that is designed to provide temporary living accommodations for individuals who lack a fixed, regular, and adequate residence while providing them with social service and other assistance to find a home and that is designated by the city as a shelter.

(3) PARK means a parcel of land dedicated and used as parkland, or city-owned land used for a park or recreational purpose that is under the administrative control of the Parks and Recreation Department.

(4) PUBLIC AREA means an outdoor area accessible to the public including a street, highway, park, parking lot, alleyway, pedestrian way, and the common areas of a school, hospital, apartment building, office building, transport facility, or business.

9-4-11(2) FINDINGS:

(A) Council finds that the city has a compelling interest in:

- (1) Protecting the health and safety of all residents and visitors, including people who are experiencing homelessness;
- (2) Ensuring the free movement of pedestrians and vehicles without undue obstruction or delay, or exposure to dangerous vehicular traffic, that may be caused by people camping in areas where there is high pedestrian or vehicular traffic;

76 (3) Protecting the environment, water quality and public health, and
77 mitigating fire risk in sensitive, flood-prone, or high fire risk
78 areas that may be negatively affected by people camping; and

79 (4) Ensuring that parks and other public spaces are, to the greatest
80 extent possible, protected and available for equal access and use
81 by all.

82 (B) Council finds that camping in public areas can, in the areas and
83 circumstances identified in this section:

84 (1) threaten public health and safety, including the health and safety
85 of those camping;

86 (2) create substantial risks to the environment; and

87 (3) block or obstruct the safe access of pedestrians and vehicles to
88 buildings and public infrastructure.

89 (C) Council finds that unwanted camping in the areas identified in this
90 Subsection (C) may be prohibited by other applicable law or by other
91 applicable property or building use rules. Council finds that the risks
92 posed by unwanted camping are great enough to ensure that camping
93 is prohibited in those areas, including: ***[Mayor Adler proposed***
94 ***moving list of existing prohibitions to finding]***

95 (1) in a park;

96 (2) on land designated by the city for conservation, preservation,
97 or water protection including nature preserves, the Balcones
98 Canyonland Preserves, and Austin Water Wildlands;

99 (3) on flood buy-out lands that the city has acquired as high flood
100 risk areas;

101 (4) in the right-of-way of a railroad or light rail track or crossing;

102 (5) in a city library or on the grounds of a city library;

103 (6) on private property without the permission of the owner or a
104 person with apparent authority to act for the owner;

105 (7) in or on transit stops, shelters, platforms, or stations; or

106 (8) in a designated and marked special use zone, including
107 construction zones, commercial service zones, passenger
108 loading zones, customer service zones, and valet zones.

109
110 **9-4-11(3) OFFENSES; EXCEPTIONS; AND AFFIRMATIVE DEFENSE:**

111
112 (A) Except as provided in Subsection (E), a person commits an offense
113 if the person camps in a public area that is not designated as a
114 camping area by the city and the person is:

115
116 (1) materially endangering the health or safety of another person or
117 of themselves; or

118
119 (2) intentionally, knowingly, or recklessly rendering impassable, or
120 impeding, the reasonable use of a public area making usage of
121 such area unreasonably inconvenient or hazardous.

122
123 (B) *[Mayor Adler proposed amendment]* A person is materially
124 endangering the health or safety of another person or of themselves
125 or is rendering impassable or impeding the reasonable use of a
126 public area making usage of such area unreasonably inconvenient or
127 hazardous if the person engages in the following behaviors in
128 camping in certain dangerous or high-traffic public areas, including:

129
130 (1) camping, sitting, or lying down on or inside a culvert or storm
131 drain;

132
133 (2) camping in the bed or on the bank of a creek or river and
134 within 5 feet of the top of the bank of a creek or river;

135
136 (3) camping, sitting, or lying down on any part of an accessibility
137 ramp for persons with disabilities;

138
139 (4) camping on land that the city has designated as having a high
140 fire risk;

141
142 (5) camping on a sidewalk;

- 143
144 (6) camping, sitting, or lying down within 15 feet of the door jamb
145 of an entrance or exit to a business or a residence **[Mayor**
146 **Adler proposed amendment]** ~~on the following high pedestrian~~
147 ~~and vehicular traffic roadways, including any sidewalks as~~
148 ~~referenced in (5) above or right of way:~~

149
150 ~~Guadalupe Street between Martin Luther King Jr. Blvd. and 26th~~
151 ~~Street;~~

152 ~~24th Street between N Lamar Blvd and Guadalupe Street~~

153 ~~Congress Avenue between Oltorf Street and 11th Street;~~

154 ~~2nd Street between Trinity Street and West Avenue;~~

155 ~~5th Street between IH-35 and Lamar Blvd;~~

156 ~~6th Street between IH-35 and Lamar Blvd;~~

- 157
158 (7) camping, sitting, or lying down ~~in~~ public areas established
159 around homeless shelters as follows:

160
161 a. Within the area of the Austin Resource Center for Homeless
162 (ARCH) bordered by East 4th Street (South), Brushy Street
163 (East), East 11th Street (North), and Brazos Street (West),
164 excluding any area under IH-35;

165
166 b. At the time that the South Austin Housing Center homeless
167 shelter becomes operational, within the area bordered by the
168 western boundary of Manchaca Road, the eastern boundary
169 of South 1st Street, the northern boundary of Lightsey Road,
170 and the southern boundaries of Redd Street and West St.
171 Elmo;

- 172
173 (8) camping, sitting, or lying down on a traffic island, median strip,
174 median island, intersection island or other similar area under a
175 highway overpass that separates opposing traffic flows with
176 either a painted area or a raised curb where one of the traffic
177 flows is a u-turn lane; **[Responding to Mayor Adler concerns**
178 **that this area may be too broad by narrowing description]** ~~or~~

- 179
180 (9) camping, sitting, or lying down on the sloped area under a
181 highway and at the top of a retaining wall or alongside a
182 highway overpass; or

183
184 (10) camping, sitting, or lying down in a designated and marked
185 special use zone, including, construction zones, commercial
186 service zones, passenger loading zones, customer service zones,
187 and valet zones.

188
189 **(C)** A person is materially endangering the health or safety of another
190 person or of themselves or rendering impassable or impeding the
191 reasonable use of a public area making usage of such area
192 unreasonably inconvenient or hazardous if -the person camps in a
193 manner that includes: **[Mayor Adler proposed amendment]**

- 194
195 (1) damaginges, alteringes, or modifyngies public infrastructure,
196 including benches, retaining walls, or planters; or
197 ~~(2) obstructs access to or egress from the entrance or exit of any~~
198 ~~building by camping within six feet of the entrance or exit, as~~
199 ~~measured from the door jamb; or~~
200 (2) obstructings normal use of and access to public infrastructure,
201 including benches or parking pay stations.

202
203 **(D)** A person is camping if the person engages in any of the activities
204 listed in Subsection (A)(1) of City Code Section 9-4-11(1)
205 (*Camping in Public Area Prohibited*) if it reasonably appears, based
206 on the totality of the circumstances, that the person conducting the
207 activity is using a public area for living accommodation purposes,
208 regardless of the person's intent or engagement in other activities.

209
210 **(E)** ~~(E)~~—This section does not apply to camping or cooking in a park
211 that complies with park regulations.

212
213 **(F)** Subsection (B) does not apply to a person who is sitting or lying if the
214 person is:

- 215 (1) in the right-of-way because of a medical emergency;
216 (2) operating or patronizing a commercial establishment that
217 conducts business on the sidewalk under Title 14 (*Streets and Use of*
218 *Public Property*) of the Code;
219 (3) participating in or viewing a parade, festival, performance, rally,
220 demonstration, or similar event;

(4) sitting on a chair or bench that is supplied by a public agency or by the abutting private property owner;

(5) sitting within a bus stop zone while waiting for public or private transportation; or

(6) waiting in a line for goods, services, or a public event.

(G) It is an affirmative defense to prosecution for a violation of Subsection (B) for sitting or lying if a person is sitting or lying and is obstructing the right-of-way, but is seated or lying down as the result of a physical manifestation of a disability, not limited to visual observation.

(HF) It is an affirmative defense to prosecution that a person owns the property or has secured the permission of the property owner to camp in a public area.

9-4-11(4) ENFORCEMENT AND ENGAGEMENT PROCESS:

Unless a law enforcement officer determines that there is an imminent health or safety threat, a law enforcement officer may issue a citation for a violation of this section only if, prior to issuing the citation, the law enforcement officer:

- (A) notified the person that the conduct violates this section;
- (B) provides the person with a reasonable opportunity to comply with the prohibition, but the person does not comply; and
- (C) contacts, whenever reasonable, a member of a Homeless Outreach Street Team (HOST), case worker, community health paramedic, or other city designee who shall have the opportunity to offer to transport a person who continues to camp in violation of City Code Section 9-4-11(*Camping in Public Area Prohibited*) to a location at which camping, is not prohibited and, as reasonably possible, at which case management and housing services can be received; or
- (D) determines that the person has previously been notified by a law enforcement officer that the person's conduct at that same address or

area violates this section, and the law enforcement officer determines that contact as set forth in Subsection (C) above is not reasonable.

PART 3.—~~The caption and City Code Section 9-4-14 (*Obstruction in the Downtown Austin Community Court Area Prohibited*) are repealed and replaced to read as follows:~~

~~§ 9-4-14 OBSTRUCTION IN THE DOWNTOWN AUSTIN COMMUNITY COURT AREA AND SITTING OR LYING IN OTHER SPECIFIED AREAS PROHIBITED~~

~~9-4-14(1) DEFINITIONS:~~

~~In this section:~~

~~(A) DISABILITY means having a physical or mental impairment which substantially limits one or more major life activities.~~

~~(1) PHYSICAL OR MENTAL IMPAIRMENT means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.~~

~~(2) MAJOR LIFE ACTIVITIES means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, learning, breathing, and working.~~

~~(B) HOMELESS SHELTER means a supervised publicly or privately operated facility that is designed to provide temporary living accommodations for individuals who lack a fixed, regular, and adequate residence while providing them with social service and other assistance to find a home and that is designated by the city as a shelter.~~

298 **~~9-4-14(2) FINDINGS:~~**

299
300 ~~(A) The council finds that the city has a compelling interest in:~~

301
302 ~~(1) encouraging and preserving a vital, pedestrian friendly urban~~
303 ~~core;~~

304
305 ~~(2) promoting tourism and business in the central business district;~~

306
307 ~~(3) preserving the quality of urban life; and~~

308
309 ~~(4) encouraging businesses and neighborhoods in the central city~~
310 ~~where walking is a realistic alternative to vehicles that use~~
311 ~~fossil fuels.~~

312
313 ~~(B) The council finds that in areas with high pedestrian traffic and a~~
314 ~~high incidence of petty crime related to public disorder, individuals~~
315 ~~obstructing, sitting, or lying in the pedestrian right-of-way:~~

316
317 ~~(1) are disruptive to residents, businesses, and customers;~~

318
319 ~~(2) discourage, block, or inhibit the free passage of pedestrians;~~
320 ~~and~~

321
322 ~~(3) contribute to the loss of access to and enjoyment of public~~
323 ~~places.~~

324
325
326 **~~9-4-14(3) OFFENSES; EXCEPTIONS; AND AFFIRMATIVE DEFENSE:~~**

327
328 ~~(A) A person commits an offense if the person is:~~

329
330 ~~(1) obstructing the right-of-way between the roadway and the~~
331 ~~abutting property line or structure, or on an object placed in~~
332 ~~that area, and the person is:~~

333
334 ~~(i) materially endangering the health or safety of another~~
335 ~~person or of themselves; or~~
336

337 (ii) intentionally, knowingly, or recklessly rendering
338 impassable or impeding the reasonable use of a public area
339 making usage of such area unreasonably inconvenient or
340 hazardous;

341
342 (2) obstructing a sidewalk, trail, or shared-use path; and

343
344 (3) the person is located in the following area, including the streets
345 and pedestrian rights-of-way that bound the area, but not
346 including the campus of the University of Texas:

347
348 (i) beginning at the intersection of 29th Street (West) and
349 Lamar Boulevard (North);

350 (ii) south on Lamar Boulevard (North) to the north shore of
351 Lady Bird Lake;

352 (iii) east along the north shore of Lady Bird Lake to the point
353 directly south of the curve at the intersection of Jesse E.
354 Segovia Street and Robert Martinez, Jr. Street;

355 (iv) north to the curve at the intersection of Jesse E. Segovia
356 Street and Robert Martinez, Jr. Street;

357 (v) west along Jesse E. Segovia Street to the intersection of
358 Chicon Street;

359 (vi) north on Chicon Street to the intersection of Seventh
360 Street (East);

361 (vii) west on Seventh Street (East) to the IH-35 East Frontage
362 Road;

363 (viii) north on the IH-35 East Frontage Road to the
364 intersection of Martin Luther King, Jr. Boulevard;

365 (ix) west on Martin Luther King, Jr. Boulevard to the
366 intersection of Guadalupe Street;

367 (x) north on Guadalupe Street to the intersection of 29th
368 Street (West); and

369 (xi) northwest on 29th Street (West) to the intersection of
370 Lamar Boulevard (North), the place of beginning.

371
372 (B) A person commits an offense if the person sits or lies down in the
373 following areas:

374
375 (1) in the right-of-way of a railroad or light rail track or crossing;

- 376 (2) ~~in a designated and marked special use zone, including,~~
377 ~~construction zones, commercial service zones, passenger~~
378 ~~loading zones, customer service zones, and valet zones;~~
379 (3) ~~on any part of an accessibility ramp, located in a public place,~~
380 ~~for persons with disabilities;~~
381 (4) ~~within 15 feet of the door jamb of an entrance or exit to a~~
382 ~~business or a residence~~ *[Mayor Adler proposed amendment]*
383

384 (C) ~~A person commits an offense if the person sits or lies down in the~~
385 ~~following areas:~~
386

- 387 (1) ~~Within the area of the Austin Resource Center for Homeless~~
388 ~~(ARCH) bordered by East 4th Street (South), Brushy Street~~
389 ~~(East), East 11th Street (North), and Brazos Street (West),~~
390 ~~excluding any area under IH 35; or~~
391 (2) ~~At the time that the South Austin Housing Center homeless~~
392 ~~shelter becomes operational, within the area bordered by the~~
393 ~~western boundary of Manchaca Road, the eastern boundary of~~
394 ~~South 1st Street, the northern boundary of Lightsey Road, and~~
395 ~~the southern boundaries of Redd Street and West St. Elmo.~~
396

397 (D) ~~This section does not apply to a person who:~~
398

- 399 (1) ~~is obstructing the right of way, or sitting or lying, because of~~
400 ~~a medical emergency;~~
401 (2) ~~operates or patronizes a commercial establishment that~~
402 ~~conducts business on the sidewalk under Title 14 (*Streets and*~~
403 ~~*Use of Public Property*) of the Code;~~
404 (3) ~~participates in or views a parade, festival, performance, rally,~~
405 ~~demonstration, or similar event;~~
406 (4) ~~sits on a chair or bench that is supplied by a public agency or~~
407 ~~by the abutting private property owner;~~
408 (5) ~~sits within a bus stop zone while waiting for public or private~~
409 ~~transportation; or~~
410 (6) ~~is waiting in a line for goods, services, or a public event.~~
411
412

(E) — ~~It is an affirmative defense to prosecution if a person is obstructing the right of way, or sitting or lying, as the result of a physical manifestation of a disability, even if the manifestation of the disability is not visually observable.~~

~~9-4-14(4) ENFORCEMENT AND ENGAGEMENT PROCESS:~~

~~Unless a law enforcement officer determines that there is an imminent health or safety threat, a law enforcement officer may only issue a citation for a violation of this section if, prior to issuing the citation, the law enforcement officer:~~

~~(A) — notifies the person that the conduct violates this section;~~

~~(B) — provides the person with a reasonable opportunity to comply with the prohibition, but the person does not comply; and~~

~~(C) — contacts, whenever reasonable, a member of a Homeless Outreach Street Team (HOST), case worker, community health paramedic, or other city designee who shall have the opportunity to offer to transport a person who continues to obstruct, sit, or lie in violation of City Code Section 9-4-14 (*Obstruction in the Downtown Austin Community Court Area and Sitting or Lying in Other Specified Areas Prohibited*) to a location at which such obstructing, sitting, or lying is not prohibited and, as reasonably possible, at which case management and housing services can be received; or~~

~~(D) — determines that the person has previously been notified by a law enforcement officer that the person's conduct at that same address or area violates this section, and the law enforcement officer determines that contact as set forth in Subsection (C) above is not reasonable.~~

PART 4. Instruction to City Manager.

(A) The City Manager shall provide to Council a quarterly report for the first year after passage of this ordinance detailing how often an accused offender under City Code Section 9-4-11 (*Camping and Obstruction in Certain Public Areas Prohibited*) and City Code Section 9-4-14 (*Obstruction in the Downtown Community Court Area and Sitting or Lying in Other Specified*

~~Areas Prohibited~~ is and is not diverted from criminal sanction through the Enforcement and Engagement process created in City Code Sections 9-4-11 (Camping and Obstruction in Certain in Public Areas Prohibited) ~~and 9-4-14 (Obstruction in the Downtown Community Court Area and Sitting or Lying in Other Specified Areas Prohibited)~~.

(B) At such time that the City designates additional homeless shelters, the City Manager shall propose amendments to City Code establishing boundaries to prohibit camping, sitting or lying within approximately one-quarter mile to one-half mile of the shelter as the City Manager determines is necessary to protect public health and safety.

(C) At such time that the Austin Transportation Department identifies additional high pedestrian and vehicular traffic roadways where camping creates a public safety risk, the City Manager shall propose amendments to City Code to add these roadways.

(D) At such time that the City Manager identifies camping practices, structures, possessions, or items that present the greatest public safety risks and potential public health hazards for people camping, sitting, lying, area residents or others, the City Manager shall propose amendments to City Code to add prohibitions for these practices, structures, possession, or items. [Resolution #32, Adler, Garza, Harper-Madison, Renteria, Casar]

PART 5. This ordinance takes effect 15 days after passage of the ordinance.

PASSED AND APPROVED

_____, 2019 §
 §
 §

Steve Adler
Mayor

APPROVED: _____ **ATTEST:** _____
Anne L. Morgan Jannette S. Goodall